

Notice of Allowability

Application No.

10/654,169

Examiner

Dionne Walls Mayes

Applicant(s)

KUHL ET AL.

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed on 9/15/2006.
2. ☒ The allowed claim(s) is/are 1-20 and 24-33.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S STATEMENT/AMENDMENT

1. Claims 1-20 and 24-33 are allowable. The restriction requirement, as set forth in the Office action mailed on February 28, 2006, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 7-8, 15-19, and 29-30, are no longer withdrawn from consideration because the claims require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. John Salazar on Monday, October 2, 2006.

The application has been amended as follows:

IN THE CLAIMS:

In claim 1, line 2, after “winnowings”, delete “in cigarette making”, and, after “tobacco particles”, delete “in” and replace with – during --,

line 3, delete “wherein”, and replace with –comprising --,

In claim 7, line 1, replace “Claim 7(Withdrawn)” with – Claim 7 (Original) --,

In claim 8, line 1, replace “Claim 8 (Withdrawn)” with – Claim 8 (Original) --,

In claim 15, line 1, replace “Claim 15 (Withdrawn)” with –Claim 15 (Original) --,
and after “wherein”, delete “the” and replace with –a--,

In claim 16, line 1, replace “Claim 16 (Withdrawn)” with -- Claim 16 (Previously Presented) --,

In claim 17, line 1, replace “Claim 17 (Withdrawn)” with –Claim 17 (Original) --,
and after “of”, delete “the” and replace with --a--,

In claim 18, line 1, replace “Claim 18 (Withdrawn)” with –Claim 18 (Original) --,

In claim 19, line 1, replace “Claim 19 (Withdrawn)” with –Claim 19 (Previously Presented) --,

In claim 24, lines 1-2, after “winnowings”, delete “in cigarette making in an air flow”, and replace with – in a stream containing tobacco particles during the manufacture of cigarettes --,

line 6, after “unit”, insert – for separating winnowings --,

In claim 29, line 1, replace “Claim 29 (Withdrawn)” with –Claim 29 (Previously Presented) --,

In claim 30, line 1, replace "Claim 30 (Withdrawn)" with –Claim 30 (Previously Presented) --,

In claim 33, line 1, after "particles", delete "in" and replace with – during --.

3. The drawings filed on September 3, 2003 are approved by the Examiner.

4. The following is an examiner's statement of reasons for allowance: While the prior art of record may disclose and/or suggest a method of detecting / generating / measuring a size distribution of a stream of tobacco particles containing winnowings, it would not have been obvious to modify said art to compare the size distribution with a settable / nominal / optimal size distribution and continually adjust the separation of winnowings depending on the result of said comparison.

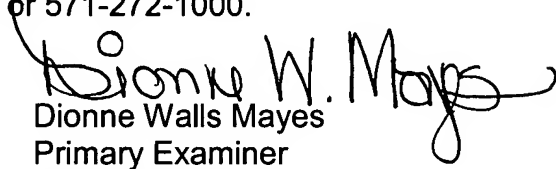
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Walls Mayes whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Dionne Walls Mayes
Primary Examiner
Art Unit 1731

October 2, 2006